IN THE HIGH COURT OF JUDICATURE AT BOMBAY

CIVIL APPELLATE JURISDICTION

SECOND APPEAL NO.1018 OF 2005

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Office Notes, Office Memoranda of Coram, appearances, Court's Orders or directions and Registrar's Orders	Court's or Judge's Orders

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Mr. V.B. Rajure for the appellants.

Mr. Manoj Chatage i/by Mr. S.D. Dharmadhikari for respondent Nos. 1 and 3.

CORAM : ANOOP V. MOHTA,J.

DATED : 10th July, 2007

P.C.

1. The appellant, who is original defendant No.1 has challenged the impugned Judgment and order passed by the District Judge, Kolhapur dated 02/02/2005 whereby the appeal was dismissed.

2. Admittedly, before the appellate court, the appellant has filed an application under order 41 Rule 23 of the Civil

Procedure code for additional evidence dated 12/07/2001. The Court has endorsed and adjourned the matter for other side’s say. By the said application the appellant wants to put on record an agreement for settlement executed between the appellant and respondent no.1. Admittedly, the said document has been executed after filing of the suit. Therefore, in a suit for such type, such documents which could have decided the disputes and the right and possession of the property in question, certainly, therefore, play a dominant roll. However, while dismissing the appeal, the learned appellate court has not passed any order on this application.

3. The learned counsel appearing for the respondents, however has

resisted to consider this application now at this stage. He also submitted that there is no certainty whether the documents were signed by the respondents.

4. The Supreme Court in **Sanjiv Goel Vs. Avtar S. Sandhu, (2006) 9 SCC 748**, while considering the scope of the Order 41 Rule 27 has observed that the non-disposal of such application leads to mis-carriage of justice. In that case also, the High court had dismissed the Second Appeal in limine without adverting to such application inspite of appellant’s grievance. The Supreme Court has therefore, set aside the order of High Court and remanded the matter to the District Judge for passing appropriate orders on the application on merits in

accordance with law. The same view is also taken in **the Premier Automobiles Ltd., Bombay Vs. Kabirunissa and Ors, AIR 1991 S.C. 91.**

5. Considering the facts and circumstances of the case, and by keeping all the points open, even for the respondents, the impugned judgment and order dated 02/02/2005 in appeal No. 255 of 2000 is quashed and set aside. The matter is remanded back to the District Judge, Kolhapur to pass appropriate order on this application Exh. 25.

6. The parties to appear before the District Judge, Kolhapur on 6th August, 2007. The learned Judge, after giving opportunity to both the parties, will pass an appropriate order and dispose of the appeal as expeditiously as

possible.

7. Resultantly, the Second appeal is disposed off, accordingly.

8. No order as to costs.

[ANOOP V. MOHTA, J.]